REMARKS

The Office Action of July 29, 2005 has been noted and its contents carefully studied. Applicants acknowledge the allowability of claim 35 if placed in independent form -- which is now the case except that "each one" is corrected to --at least one--.

The following paragraphs correspond to the order of the paragraphs of the Office Action:

The Abstract and claim 35 are now amended by incorporating the correct punctuation. Also, in claim 35, percentages are specified in percent by weight, support being found, for example, on page 16, line 3.

Claim Rejections - 35 U.S.C. 112

Claim 7 is now cancelled so as to remove the issue set forth in the Office Action.

Claim Rejections - 35 U.S.C. 102

Claims 1, 8, 9, 11, 14, 16, 17, 23 and 24 were rejected as being anticipated by Ghosal U.S. Patent No. 6,124,268. Inasmuch as claim 1 is amended by incorporating the limitation of non-rejected claim 5 into claim 1, the rejection is now moot.

Claim Rejections - 35 U.S.C. 103(a)

Claims 1-34 were also rejected under 35 U.S.C. 103(a) as being unpatentable over Ghosal U.S. Patent No. 6,362,167 and Vatter et al. U.S. Patent 6,475,500.

In the Office Action, it is stated that the Examiner considers 0.001 to 0.01% Rutin to be within the range of 0 to 15% Rutin specified by Ghosal. It is respectfully submitted, however, that Ghosal would not have realistically taught the range of 0 to 15% Rutin to one of ordinary skill in the art. On column 4, under the heading "Detailed Description of the Invention", the Patentee referred to U.S. Patent 6,124,268. In that patent, the amount of Rutin is set forth on column 2, line 43 as 5-15%, and consistent therewith on column 4 of 6,362,167, line 40, the same amount is set forth for Rutin, namely about 5-15%. It is appreciated that claim 3 on column 8 of 6,362,167, sets forth the expression "about 0-15% of 3',4',5,7-tetrahydroxyflavone-3-

O-rhamnoglucoside". Such a value, however, is inconsistent with the description of the extract set forth in the specification and also which is referred to in the earlier patent 6,124,268. Consequently, one of ordinary skill in the art would have considered "0-15%" to be an anomaly and not a true description of the amount of Rutin in the extract. Much less would one of ordinary skill in the art be led to a percent of Rutin of less than .01%. For this reason alone, Applicants' invention is unobvious over the teachings of the combined references.

With respect to the teachings of Vatter et al., U.S. 6,475,500, it is appreciated that this reference is directed to an anhydrous skin treatment composition which "includes a cross-linked siloxane elastomer gel of specific yield point, a skin conditioning agent and a volatile siloxane and that inclusions of the select elastomers provide improved uniform distribution of the pigments". Thus, the teaching to one of ordinary skill in the art is to use the particular siloxane elastomer gel with a volatile siloxane in order to provide improved results. Inasmuch as Applicants' product is based on natural water-soluble materials, it would not have even occurred to one of ordinary skill in the art to convert water containing compositions to anhydrous compositions. In this respect, it is noted that Applicants' allowed claim 35 requires a multi-step process in order to accomplish same. Accordingly, it is respectfully submitted that one of ordinary skill in the art would not, in the absence of Applicants' concept, combine the teachings of the Vatter et al. reference with an extract of Emblica officinalis. In the absence of any evidence which would support a finding that it would be obvious to convert the aqueous formulations to an anhydrous form, Applicants respectfully submit that the rejection is based on hindsight reconstruction rather than a realistic appreciation of the inventive concept that Applicants have achieved. *In re Lee*, 277 Fed. 3rd, 61 USPQ 2nd.

As for Applicants' dependent claims, they offer a level of unobviousness even greater than claim 1. For example, in the section bridging columns 12 and 13 of the Vatter et al. reference, there is a discussion of the use of pigments used to impart opacity and color to the cosmetic compositions described in the reference. A host of specific examples is given on column 13, lines 4-12, and then the preferred pigments titanium dioxide, ion oxides and mixtures thereof are indicated as especially preferred. Thereafter, on column 13, lines 14-40 are set forth a large variety of other pigments and fillers. There is nothing which would point one of ordinary

skill in the art to the use of bismuth oxychloride in particular which is used in Applicants' invention for improving skin feel, as pointed out on pages 9 and 10 of Applicants' disclosure. Accordingly, Applicants' claims 25-34 are amended to point out that the bismuth oxychloride has a particle size of less than 35 microns (80% within range) and a median size of 8.0 to 20 microns, support being found in the table on page 10 with respect to the pigment Biron (LF®-2000). It is respectfully submitted that one of ordinary skill in the art would not be motivated to change the aqueous formulation of water soluble extracts and then incorporate the particular bismuth oxychloride for the purposes of improving skin feel -- from the combined teachings of the references.

With respect to the other dependent claims, Applicants do not necessarily acquiesce to the Examiner's discussion of same and reserve the right to rebut same at a later time if ever necessary.

Claims 1-34 are also rejected as being unpatentable over U.S. Patent 6,649,150 in view of the Vatter et al. patent.

By inspection, it is seen that Dr. Chaudhuri is a co-inventor of U.S. 6,649,150 and that there is a joint Assignee of the patent and the present application. (EM Industries Inc. has been changed in name to EM Chemicals Inc.)

This reference does not suffer from the lack of a description of the extraordinarily low amounts of Rutin, and it is the composition set forth in this reference co-invented by Dr. Chaudhuri that is improved by the present invention so that the formulation is now anhydrous rather than aqueous. It is thus respectfully submitted that in the absence of Applicants' disclosure, there would be no motivation to use any of the teachings of Vatter et al. since the concept of changing the aqueous composition to an anhydrous form is not suggested.

In addition, the discussion above which relates to the bismuth oxychloride as well as the other dependent claims applies in this case as well. Consequently, it is respectfully submitted that is proper for the Examiner to withdraw the rejection under 35 U.S.C. 103(a).

Double Patenting

At present, the Assignee of the present application is EMD Chemicals Inc., the

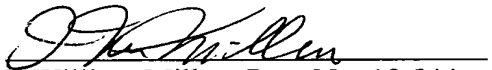
predecessor in interest being EM Industries, the same co-Assignee of U.S. 6,649,150. In the latter patent, however, there is another co-Assignee namely Natreon Inc. If it is correct not to name Natreon Inc. as a co-Assignee in the present application, then the two Assignees would be different. (Counsel will be checking this point.) Under such circumstances, it is believed that a double patenting rejection is improper.

In any case, to the extent that the double patenting rejection is proper, Applicants, at least for the present, will rely on the rebuttal of the above recited rejection under 35 U.S.C. 103(a). If, however, a terminal disclaimer becomes the only issue which prevents a patent from issuing on the present application, Applicants will concede to the point and file same.

In view of the above remarks, favorable reconsideration is courteously requested.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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